Legal Dilemmas and Regime-Building in the East Asia Maritime Conflicts

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Chapter 1
Introduction

1.1 Background

Today, maritime territorial disputes in East Asia are perhaps politically more salient than ever. Geopolitically, disputes over sovereignty and maritime boundaries fuel tensions among regional powers. Geographically, multiple states exercise maritime jurisdiction and claim maritime entitlements over the same seas. In Northeast Asia (NEA), there are three semi-enclosed seas where maritime boundary disputes exist.[1] In the Yellow Sea/West Sea South Korea and North Korea are in dispute concerning the legality of the Northern Limit Line (NLL) as a *de facto* maritime boundary between two States.[2] In addition, there are overlapping exclusive economic zone (EEZ) and continental shelf (CS) claims between China and South Korea.[3] In the East China Sea (ECS), China, South Korea, and Japan rely on different methods of delimitation to make and to justify overlapping CS claims.[4] In the Sea of Japan/East Sea, South Korea and Japan have a CS maritime boundary in the Korean/Tsushima Strait, but no maritime boundaries are further delimited between two States.[5] North Korea and Russia have

[1] In this thesis, China officially represents People's Republic of China (PRC). South Korea officially represents Republic of Korea (ROK). North Korea officially represents Democratic People's Republic of Korea (DPRK). To be noted, from South Korea's perspective, the Yellow Sea is also called West Sea, and the Sea of Japan is called East Sea.

[2] Suk Kyoon Kim, *Maritime Disputes in Northeast Asia: Regional Challenges and Cooperation* (Leiden, Netherlands: Brill Nijhoff, 2017), 18-24. Suk Kyoon Kim, "Understanding Maritime Disputes in Northeast Asia: Issues and Nature," *International Journal of Marine and Coastal Law* 23, Issue 2 (2008): 219-20. After the Korean War, the United Nations Command General Mark Clark in 1953 unilaterally declared the Northern Limit Line "as military control lines in the West and East Seas". This line "runs between the five West Islands under control of South Korea and the North Korea's coast". North Korea and South Korea have sovereignty disputes over five islands located around the NLL due to the Korean War. The five islands consist of Yeonpyeong Island, Baengnyeongdo, Daecheongdo, Socheongdo, and U Island (or Paekryeong-do, Daechung-do, Socheng-do, Yeonpyeong-do, and Woo-do). They are also called the Five West Sea Islands. The five islands are currently controlled by South Korea, while North Korea rejects this and claims ownership of these islands.

[3] Suk Kyoon Kim, "Understanding Maritime Disputes in Northeast Asia," 226-7.

[4] China: "Submission by the People's Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea," Commission on the Limits of the Continental Shelf, December, 14, 2012, accessed May 3, 2018, http://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/executive%20summary_EN.pdf.
South Korea: "Partial Submission to the Commission on the Limits of the Continental Shelf Pursuant to Article 76 Paragraph 8 of the United Nations Convention on the Law of the Sea," Commission on the Limits of the Continental Shelf, December, 14, 2012, accessed May 3, 2018, https://www.un.org/Depts/los/clcs_new/submissions_files/kor65_12/executive_summary.pdf.
Japan: "Communications Received with regard to the Submission made by China," Commission on the Limits of the Continental Shelf, December 28, 2012, SC/12/372, accessed May 3, 2018, https://www.un.org/Depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_28_12_2012.pdf. Communications Received with regard to the Submission made by the Republic of Korea: Japan, Commission on the Limits of the Continental Shelf, January 11, 2013, SC/13/019, accessed May 3, 2018, https://www.un.org/Depts/los/clcs_new/submissions_files/kor65_12/jpn_re_kor_11_01_2013.pdf.

[5] Park Choon-ho, "Japan-South Korea, Report Number 5-12," in *International Maritime Boundaries*, ed. J.I. Charney and L.M. Alexander (Dordrecht, Netherlands: Martinus Nijhoff, 1993), 1057.

reached a boundary agreement on the EEZ and CS.[6] Moreover, no maritime boundaries have been reached between Russia and Japan, between yet.

In the South China Sea (SCS), there are overlapping TS, EEZ, and CS among bordering States. China asserts its maritime entitlements from four archipelagos over which it claims sovereignty as a single unit, as well as the mainland coast.[7] In contrast, neighboring countries, including Vietnam, the Philippines, Malaysia, Brunei, and Indonesia, merely claim full maritime entitlements from the mainland coast instead of insular features in the SCS.[8] The most recent development in the SCS is the Arbitration Case unilaterally initiated by the Philippines against China, in terms of Article 287 and Annex VII to the United Nations Convention on the Law of the Sea in 1982 (UNCLOS).[9] On July 12, 2016, the Tribunal issued the Merits Award (MA) on the *SCS* Arbitration, which overwhelmingly favored almost all the Philippines' claims.[10] As a consequence, in NEA and the SCS there is a situation where there are potentially trilateral or quadrilateral areas which require delimitation between at least three countries before a full set of straight-line maritime boundaries might be achieved.

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6 "Agreement between the Union of Soviet Socialist Republics and the Democratic People's Republic of Korea on the Delimitation of the Economic Zone and the Continental Shelf," United Nations Division for Ocean Affairs and the Law of the Sea, January 22, 1986, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/STATEFILES/PRK.htm.

7 "Statement of the Government of the People's Republic of China on China's Territorial Sovereignty and Maritime Rights and Interests in the South China Sea," Ministry of Foreign Affairs of the People's Republic of China, accessed May 3, 2018, https://www.fmprc.gov.cn/nanhai/eng/snhwtlcwj_1/t1379493.htm.

8 Vietnam: "The Law of the Sea of Vietnam," Vietnam Law & Legal Forum, July 2, 2012, accessed May 3, 2018, http://vietnamlawmagazine.vn/law-of-the-sea-of-vietnam-4895.html. "Joint Submission by Malaysia and Viet Nam to the Commission on the Limits of the Continental Shelf Made on 6 May 2009 in the Southern Part of the South China Sea," Commission on the Limits of the Continental Shelf, May 6, 2009, accessed May 3, 2018, https://www.un.org/Depts/los/clcs_ new/submissions_files/mysvnm33_09/mys_vnm2009excutivesummary.pdf.
Malaysia: "Continental Shelf Act," United Nations Division for Ocean Affairs and the Law of the Sea, July 28, 1966, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MYS_1966_Act.pdf. "Exclusive Economic Zone Act," United Nations Division for Ocean Affairs and the Law of the Sea, 1984, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MYS_1984_Act.pdf.
Philippines: "Republic Act No. 3046 to Define the Baselines of the Territorial Sea," United Nations Division for Ocean Affairs and the Law of the Sea, June 17, 1961, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1961_Act.pdf. "Presidential Decree No. 1599 of Establishing an Exclusive Economic Zone and for Other Purposes," United Nations Division for Ocean Affairs and the Law of the Sea, June 11, 1978, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_1978_Decree.pdf.
Brunei: "Brunei Darussalam's Preliminary Submission concerning the Outer Limits of its Continental Shelf," Commission on the Limits of the Continental Shelf, May 12, 2009, accessed May 3, 2018, http://www.un.org/depts/los/clcs_ new/submissions_files/preliminary/brn2009preliminaryinformation.pdf.
Indonesia: "Act on the Indonesian Exclusive Economic Zone," United Nations Division for Ocean Affairs and the Law of the Sea, October 18, 1983, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/I DN_1983_Act.pdf. "Act regarding Indonesian Waters," United Nations Division for Ocean Affairs and the Law of the Sea, August 8, 1996, accessed May 3, 2018, https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/IDN _1996_Act.pdf.

9 "Note Verbale No. 13-0211 of the Philippines," Department of Foreign Affairs of the Republic of the Philippines, January 22, 2013, accessed May 3, 2018, http://www.dfa.gov.ph/index.php/downloads/doc_download/523-notification-and-statement-of-claim-on-west-philippine-sea.

10 *The Republic of Philippines v. The People's Republic of China*, Permanent Court of Arbitration (PCA), 2013-9, Award on Merits (PCA. 2016).

To begin, it is necessary to provide a definition of a third State in this thesis. When two or more States have maritime boundary disputes and seek settlement via international adjudication or negotiation, there are States which have coasts adjacent or opposite to those of the disputing parties but are not parties to that particular dispute. Thus, these non-disputing countries are defined as third States in the context of maritime delimitation. In this process, the extension of a final maritime boundary line may enter into maritime areas claimed by the non-involved States, consequently directly affecting the legal interests and rights of third States. Overall, this thesis will mainly focus on instances where maritime delimitation directly affects the interests and rights of third States.[11]

From the perspective of international law, the presence of third States appears in international adjudication and state practice, particularly in international maritime boundary delimitation. Notably, recent case law has pointed out that international law cannot fully take into account the rights and interests of third States. Third States in the maritime delimitation have been subject to prejudice and exposed the incapability of international law at this point. Nonetheless, from the perspective of international relations, the presence of third States in maritime conflicts can be dealt with in a multilateral framework. Regime theory in international relations provides an additional means to fill the lacuna of international law in addressing the presence of third States. Accordingly, there are two directions in which one can understand the significance of the presence of third States in a multistate-disputed zone. All in all, the focus of the current research project is to analyze this issue in the East Asian region from both perspectives.

1.2 Research questions in the thesis

Against this background, the main research question concerning the East Asian maritime conflicts in the thesis is divided into two parts:

First, what are the legal dilemmas in the East Asian regional maritime dispute settlement when the rights and interests of third States have to be taken into account?

Second, given the fact that legal means cannot sufficiently deal with the presence of third States, to what extent can regime theory in international relations assist States

[11] This paragraph has been published in one of the author's articles: Qi Xu, "Reflections on the Presence of Third States in International Maritime Boundary Delimitation," *Chinese Journal of International law* 18, Issue 1 (2019): 92-3.

involved in the East Asian maritime conflict in dealing with the rights and interests of third States?

To be more specific, there are five sub-questions deriving from the central research questions. The first and second research questions are concerned with international law's role in addressing the rights and interests of third States.

1) How does international law deal with the presence of third States at the procedural stage of international adjudication?

In light of international case law, the evolution of the *Monetary Gold* principle reflects to what extent third States are effectively taken into account at the jurisdictional phase of international adjudication. To be noted, in the *SCS* Arbitration Case, whether or not to apply this principle to debar the Tribunal from exercising jurisdiction has been under discussion. Therefore, it is necessary to present an overview of the jurisprudence relating to the *Monetary Gold* principle and to see whether the Tribunal's decision in the *SCS* Arbitral ruling is consistent with it. The consistency or inconsistency is linked to how third States are affected and whether there is a legal dilemma for third States in the SCS region in the present era.

2) How has the procedure of intervention in international adjudication evolved when third States seek to intervene in a pending dispute, particularly in international maritime boundary delimitation?

Apart from the jurisdiction aspect, the presence of third States also arises in international adjudication when they seek intervention at the substantial stage of a pending dispute. The procedure of intervention can be sought when third States consider their interests may be affected by the pending decision of a court or tribunal or the construction of international treaties to which third States other than the original litigants are involved as parties. It is revealed that the majority of international case law relates to international maritime boundary delimitation. To examine how third States are taken into account in maritime disputes, the jurisprudence relating to the procedure of intervention should not be overlooked, and one should figure out whether there is a legal dilemma for third States.

In light of recent case law, these two questions describe the inadequacy of legal means regarding the protection of the rights and interests of third States in the multistate-disputed zone. Due to international law's insufficiency in providing tangible and

substantive legal protection for third States, the third research question shifts the focus to a possible role of international relations and usefulness as an auxiliary means to international law in the maritime conflict of a multistate-disputed zone.

3) How can international relations theory help one to understand the problem of third States in international adjudication? Why is the so-called multivariate regime theory capable of providing supplementary and additional protection for third States?

The role of international law in addressing the presence of third States is constrained in maritime conflicts. In a multistate-disputed zone, the legal method at the bilateral level to ensure non-infringement upon the rights and interests of third States remains unresolved. Such a legal dilemma thus demands other auxiliary means to ensure such interests will be safeguarded. Therefore, a method at the multilateral level is necessary in the multistate marine environment. Regime theory in international relations possesses such a multilateral character but has to obtain further clarifications on why it could meet the needs of safeguarding third States in multistate-disputed maritime areas. Compared with other varying regime formations, the so-called multivariate regime enables management of third States' interests and rights of that are commonly shared with disputing party States in the multistate-disputed maritime zone.

After a general analysis of how international law and international relations respond to the presence of third States in maritime disputes, the present work moves to the East Asia region, specifically international legal dilemmas and the application of multivariate regime model of international relations in NEA and the SCS. Below are the fourth and fifth research sub-questions.

4) What are the legal dilemmas that the presence of third States presents in the NEA maritime delimitation disputes? To what extent could the establishment of a multivariate maritime regime assist the NEA bordering countries in taking into account, via transboundary marine cooperation, third States' interests and rights of that are commonly shared with disputing party States?

As previously introduced, three contested maritime zones in NEA have trilateral or quadrilateral areas where the presence of third States should be taken into account. Whether the presence of third States hinders bordering States in resolving their maritime boundary disputes requires examination. If so, it is conceivable that legal dilemmas exist in the NEA maritime conflict. In terms of maritime interests commonly shared by involved States, such as fisheries and marine environment, how a multivariate

maritime regime enhances current regime settings in the NEA to deal with these maritime interests will be discussed in detail.

5) What are legal dilemmas in the SCS maritime delimitation disputes after the *SCS* Arbitration in 2016 because of the presence of third States? By the way of transboundary marine cooperation, to what extent could the establishment of a multivariate maritime regime assist the countries that border the SCS to take third States' interests and rights of that are commonly shared with disputing party States in the multistate-disputed maritime zone?

It is to be noted that the SCS has trilateral or quadrilateral areas where the presence of third States should be taken into account as well. Whether the presence of third States hinders bordering States in resolving their maritime boundary disputes requires examination. In the present work the focus is on the delimitation framework after the *SCS* Arbitration case and seeing whether such a ruling still prevents neighboring countries from demarcating their overlapping maritime boundaries. If so, it is conceivable that legal dilemmas remain present in the SCS's maritime conflict. In terms of maritime interests commonly shared by involved States, such as fisheries and marine environment, how a multivariate maritime regime enhances current regime settings in the SCS to address these maritime interests will be discussed in detail.

To illustrate, before moving forward to the methodological part of the study, it would be useful to give an overview of previous literature on the presence of third States in maritime disputes and the East Asian maritime conflict. The purpose of reviewing existing academic work is to establish how the current research project contributes to the interdisciplinary study at the interface of international law and international relations.

1.3 Literature review and theoretical underpinnings

The present work will have two parts about the literature review. The first part presents international law and international relations analyses of territorial and maritime disputes. The international law literature is more concerned with the presence of third States in the maritime disputes. The second section observes the literature on the NEA and SCS disputes' settlement and regional cooperation.

1.3.1 International law and international relations analyses of territorial and maritime disputes

This thesis will now look at "territory" as both a political and a legal term.[12] Marcelo Kohen and Mamadou Hébié observe, "The legal meaning of 'territory' includes other areas besides land. Disputes as to control over, or use of spaces may also refer to areas other than land, such as maritime areas, the airspace or the outer space."[13] In other words, maritime disputes can be viewed as one specific category of territorial disputes. From a legal point of view, territory can be acquired in many ways—occupation, conquest, cession, accretion, etc—which have been extensively discussed in international case law.[14] However, these modes have been considered as not sufficiently explaining how international law settles territorial disputes.[15] Land boundary disputes sometimes simultaneously involve territorial disputes. The principle of *uti possidetis* (as you possess) refers to the transformation of former administrative limits into the boundaries of new states in order to maintain border stability.[16] Additionally, the role of *effectivité* (effectiveness) depends on whether a State's act is unlawful or not if the legal title is not capable of showing precisely the territorial expanse.[17] Consequently, the lawfulness of a State's conduct should be the prerequisite for *effectivité* to affect the legal title to a territory, indicating that the *effectivité* itself is not decisive. Moreover, there are also some new fields in which general principles of international law concerning the title of sovereignty are being challenged, for instance, the Arctic, Antarctica, the moon, etc. In addition, maritime conflicts under international law contain disputes relating to maritime delimitation, exploitation, and exploration of natural resources and drilling activities, fisheries, marine environment protection, etc. It should be noted that although Grotius and subsequent international legal scholars have advocated *mare liberum*, it should be pointed out that *mare justum* is becoming more prevalent. For example, although the high sea is defined as the sea of freedom, the international community has passed a series of international treaties to regulate State behavior for the purpose of protecting and preserving the high sea. For maritime

12 Gbenga Oduntan, *International Law and Boundary Disputes in Africa* (London, United Kingdom: Routledge, 2015), 38.

13 Marcelo G. Kohen and Mamadou Hébié, "Territorial Conflicts and Their International Legal Framework," in *Research Handbook on Territorial Disputes in International Law*, ed. Marcelo G. Kohen and Mamadou Hébié (Cheltenham, United Kingdom: Edward Elgar Publishing, 2018), 5.

14 Island of Palmas Case (or Miangas), United States of America v. The Netherlands, 2 RIAA 829 (1928). David Harris and Sandesh Sivakumaran eds, *Cases and Materials on International Law* (London, United Kingdom: Sweet & Maxwell, 2015) 159-66. Legal Status of Eastern Greenland, Norway v Denmark, Ser A/B 4, 22 (PCIJ. 1933). Western Sahara, Advisory Opinion, I.C.J. Rep 12, 39 (ICJ. 1975). Award of the Arbitral Tribunal in the First Stage of the Proceedings between Eritrea and Yemen (Territorial Sovereignty and Scope of the Dispute), Eritrea/Yemen, 22 RIAA 209, 268, para. 239 (1998). Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge, Malaysia/Singapore, I.C.J. Rep 12, 50, para. 121 (ICJ. 2008).

15 Kohen and Hébié, *Territorial Conflicts*, 2.

16 Case concerning the Frontier Dispute, Burkina Faso/Republic of Mali, I.C.J. Rep 554, 565-7 (ICJ. 1986). Land, Island, Maritime Frontier Dispute, El Salvador/Honduras: Nicaragua Intervening, I.C.J. Rep 351, 390-401 (ICJ. 1992).

17 *Burkina Faso/Republic of Mali*, I.C.J. Rep 554, at 586. Land and Maritime Boundary between Cameron and Nigeria, Cameroon v. Nigeria, I.C.J. Rep 303, 353, para. 68 (ICJ. 2002). Case concerning the Frontier Dispute, Benin/Niger, I.C.J. Rep 90, 120, para. 47 (ICJ. 2005). Case Concerning the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea, Nicaragua v. Honduras, I.C.J. Rep 659, 706-7, paras. 151-8 (ICJ. 2007).

delimitation disputes or cases, there is the principle in the law of the sea that the land dominates the sea which is enshrined.[18] International case law consonantly corroborates such a principle.[19] Yoshifuma Tanaka has identified two distinct phases regarding international case law of maritime delimitation.[20] One is the "result-oriented equity" approach from 1969 to 1992, which concedes that equitable results should be the only goal for delimitation, without being bound by any method of maritime delimitation.[21] The other tactic is the "corrective-equity" approach, which contains two methods. The first is the two-stage method, which establishes an equidistance line, and it takes into account some special circumstances to adjust the provisional line to the final delimitation line. The second is the three-stage approach, which establishes a provisional equidistance line, then uses relevant circumstances to adjust the provisional line, and finally adopts a disproportionality test to achieve an equitable result.[22] The presence of third States is phenomenal in the case law of maritime delimitation, and relevant literature will be cited below.

The definition of territory from international relations scholars seems less broad. M. Taylor Fravel contends that the territorial dispute is defined as a conflicting claim by two or more states over the ownership of the same piece of land.[23] In addition, the role of territory in international relations varies in different international relations theories. Realists believe that, so as to pursue its maximum national interest to maintain its safety and survival, conquering and controlling territory is the paramount political objective in a world of territorial states.[24] In the view of liberalists, with the escalation of territorial and maritime disputes, if citizens believe national interests are harmed by other states, increasing emotions from individuals and social groups urge domestic governments to react to the conflicts.[25] As far as constructivists are concerned, as stated by Anne-Marie

[18] Prosper Weil, *The Law of Maritime Delimitation-Reflections* (Cambridge, United Kingdom: Cambridge Grotius Publications Limited, 1989), 51.

[19] Fisheries Case, United Kingdom v. Norway, I.C.J. Rep 116, 133 (ICJ. 1951). The Court declared that it is the land which confers upon the coastal State a right to the waters off its coasts. North Sea Continental Shelf Cases, Federal Republic of Germany/Demark; Federal Republic of Germany/the Netherlands, I.C.J. Rep 3, 51, para. 96 (ICJ. 1969). The Court indicated that the land is the legal source of the power which a State may exercise over territorial extensions seaward. Aegean Sea Continental Shelf, Greece v. Turkey, I.C.J. Rep 3, 36, para. 86 (ICJ. 1978). The Court points out that in short, continental shelf rights are legally both an emanation from and an automatic adjunct of the territorial sovereignty of the coastal State. Case Concerning the Continental Shelf, Libyan Arab Jamahiriya/Malta, I.C.J. Rep 3, 13, para. 49 (ICJ. 1985). The Court clarified that the capacity to engender continental shelf rights derives not from the landmass, but from sovereignty over the landmass.

[20] Yoshifumi Tanaka, *The International Law of the Sea*, 2nd ed. (Cambridge, United Kingdom: Cambridge University Press, 2015), 202-4.

[21] Tanaka, *The International Law of the Sea*, 202-4.

[22] Ibid., 204-7.

[23] M. Taylor Fravel, *Strong Borders, Secure Nation Cooperation and Conflict in China's Territorial Disputes* (Princeton: Princeton University Press, 2008), 38.

[24] John J. Mearsheimer, *Tragedy of Great Power Politics*, (New York: W. W. Norton, 2001), 37.

[25] Tamar Meisels, "Liberal Nationalism and Territorial Rights," *Journal of Applied Philosophy* 20, Issue 1 (2003): 31-43. Ryan D. Griffiths, "States, Nations, and Territorial Stability: Why Chinese Hegemony Would Be Better for International Order, Security Studies," *Security Studies* 25, Issue 3 (2016): 519-45. John D. Ciorciari and

Slaughter and Thomas Hale, "the norm of State sovereignty has profoundly influenced international relations, creating a predisposition for non-interference that precedes any cost-benefit analysis States may undertake". [26] Moreover, a number of elements, including "the extent of rule of law", "the extent of democracy", "value or salience of the territory", "membership in international organizations", "relative military capabilities", "ethnic or strategic value", "power relations between the disputing States", "the role of alliances", "past win/loss record", "domestic legal systems", etc, are regarded as the determinant factors in the selective process of settlement mechanisms concerning territorial disputes.[27] So as to verify whether a factor at issue exclusively and overwhelmingly turns into a decisive one, international relations scholars are required to put forward hypotheses, and several variables related to that factor are equivalently determined.

Regarding the role of third States in international dispute settlement, international legal scholars are much more active in clarifying it. Firstly, the presence of third States as a jurisdictional matter in international adjudication has been examined, in light of the *Monetary Gold* principle or the indispensable third-party doctrine. The majority of scholars contend that third States rarely prevent international courts or tribunals from completely exercising its jurisdiction *ratione personae* and *ratione materiae* over a case.[28] Additionally, despite the fact that the presence of third States as a jurisdictional

Jessica Chen Weiss, "Nationalist Protests, Government Responses, and the Risk of Escalation in Interstate Disputes," *Security Studies* 25, Issue 3 (2016): 546-83.

[26] This argument can explain that, concerning territorial sovereignty disputes, some States are unwilling to accept interference from third-party dispute settlement bodies. *Max Planck Encyclopedia of Public International Law*, "International Relations, Principal Theories" by Anne-Marie Slaughter and Thomas Hale, accessed May 3, 2018, http://opil.ouplaw.com/view/ 10.1093/law:epil/9780199231690/law-9780199231690-e722?prd=EP IL.

[27] Todd L. Allee and Paul K Huth, "The Pursuit of Legal Settlements to Territorial Disputes," *Conflict Management and Peace Science* 23, Issue 4 (2006): 285-307. William J Dixon, "Democracy and the Management of International Conflict," *Journal of Conflict Resolution* 37, Issue 1 (1993): 42-68. Sara McLaughlin Mitchell, "A Kantian System? Democracy and Third Party Conflict Resolution," *American Journal of Political Science* 46, Issue 4 (2002): 749-59. Gregory A Raymond, "Democracies, Disputes, and Third-Party Intermediaries," *Journal of Conflict Resolution* 38, Issue 1 (1994): 24-42. Emilia Justyna Powell and Krista E Wiegand, "Strategic Selection: Political and Legal Mechanisms of Territorial Dispute Resolution," *Journal of Peace Research* 51, Issue 3 (2014): 361-74. Krista E. Wiegand and Emilia Justyna Powell, "Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes," *Journal of Conflict Resolution* 55, no. 1 (2011): 33-59. Paul R Hensel and Sara McLaughlin Mitchell, "Issue Indivisibility and Territorial Claims," *GeoJournal* 64, Issue 4 (2005): 275-85. Megan Shannon, "Preventing War and Providing the Peace? International Organizations and the Management of Territorial Disputes," *Conflict Management and Peace Science* 26, Issue 2 (2009): 144-63. Holley Hansen, Sara McLaughlin Mitchell, and Stephen C. Nemeth, "IO Mediation of Interstate Conflicts: Moving beyond the Global vs. Regional Dichotomy," *Journal of Conflict Resolution* 52, Issue 2 (2008): 295-325. Áslaug Ásgeirsdóttir and Martin C. Steinwand, "Distributive Outcomes in Contested Maritime Areas: The Role of Inside Options in Settling Competing Claims," *Journal of Conflict Resolution* 62, Issue 6 (2016): 1284-313. Áslaug Ásgeirsdóttir and Martin Steinwand, "Dispute Settlement Mechanisms and Maritime Boundary Settlements," *Review of International Organizations* 10, Issue 2 (2015): 119-43.

[28] Stuart Kaye, "Jurisdiction in the South China Sea Arbitration: Application of the *Monetary Gold* Principle," in *The South China Sea Arbitration: The Legal Dimension*, ed. S. Jayakumar et al. (Cheltenham, United Kingdom: Edward Elgar Publishing, 2018), 50. Alexander Orakhelashvili, "The Competence of the International Court of Justice and the Doctrine of the Indispensable Party: From *Monetary Gold* to *East Timor* and Beyond," *Journal of International Dispute Settlement* 2, Issue 2 (2011): 373. Bola A. Ajibola, "The International Court of Justice and Absent Third Parties," *African Yearbook of International Law* 4, Issue 1 (1996): 100-2. Tom Dannenbaum, "Politics, the Rule of Law, and the Role of the Crime of Aggression: A Response to Koh and Buchwald," *American Journal of International Law Unbound* 109, (2016): 236. Martins Paparinskis, "Procedural Aspects of Shared Responsibility in the International Court of Justice," *Journal of International Dispute Settlement* 4, Issue

issue always appears in cases of international responsibility, in the fields of international arbitration and international criminal law, the possibility of applying the jurisprudence of the *Monetary Gold* case has been discussed but considered to be negative.[29] Secondly, third States may invoke the procedure of intervention under Articles 62 and 63 of the Statute of the International Court of Justice (ICJ or the Court). Nevertheless, it has been found that scholars are doubtful regarding the effectiveness of this procedure in the protection of the rights and interests of third States under Article 62. Donald Greig asserts that the Court may not achieve a satisfactory balance between the interests of litigating parties and third party States in the proceedings.[30] Recently, Alina Miron has posed doubts as to whether there is any possibility at all for third States to seek intervention in maritime delimitation cases according to the ICJ's interpretation of Article 62.[31] Furthermore, Robert Kolb and Hugh Thirlway separately point out that Article 59 of the ICJ Statute is also inadequate to safeguard the rights and interests of third States.[32] Thirdly, in maritime delimitation cases, the rights and interests of third States have drawn scholarly attention. Prosper Weil declares that only the coasts abutting the area of delimitation whose projections may overlap are relevant to a delimitation; it would not be conceivable for a court to widen its field of consideration to coasts which had nothing to do with the delimitation in question.[33] Malcolm Evans highlights that the assessment of third States' impact on the delimitation line is a subjective decision and cannot be taken into account.[34] However, with the increasing number of maritime delimitation disputes, the presence of third States has been

2 (2013): 300, 306-7, 316. Christine Chinkin, "East Timor Moves into the World Court," *European Journal of International Law* 4, Issue 2 (1993): 219. André Nollkaemper, "Concerted Adjudication in Cases of Shared Responsibility," *New York University Journal of International Law and Politics* 46, Issue 3 (2014): 821. Noam Zamir, "The Applicability of the *Monetary Gold* Principle in International Arbitration," *Arbitration International* 33, Issue 4 (2017): 528. Paolo Palchetti, "Litigating Member State Responsibility: The *Monetary Gold* Principle and the Protection of Absent Organizations," *International Organizations Law Review* 12, Issue 2 (2015): 480. Paolo Palchetti, "Litigating Member State Responsibility: The *Monetary Gold* Principle and the Protection of Absent Organizations," in *International Organizations and Member State Responsibility: Critical Perspectives*, ed. Ana Sofia Barros, Cedric Ryngaert, and Jan Wouters (Leiden, Netherlands: Brill Nijhoff, 2017), 190.

[29] Zamir, "The Applicability of the *Monetary Gold* Principle," 537. Tom Ruys, "Justiciability, Complementarity and Immunity: Reflections on the Crime of Aggression," *Utrecht Law Review* 13, Issue 1 (2017): 25-6. Mirinda O'Gorman and Charles J.G. Sampford, "Aggression and *Monetary Gold* Quo Vadis?" in *Access to International Justice*, ed. Patrick Keyzer, Vesselin Popovski, and Charles J.G. Sampford (London, United Kingdom: Routledge, 2014), 61-2. James Crawford, *State Responsibility: The General Part* (Cambridge, United Kingdom: Cambridge University Press, 2013), 668. Ademola Abass, "The International Criminal Court and Universal Jurisdiction," *International Criminal Law Review* 6, Issue 3 (2006): 382.

[30] Donald W. Greig, "Third Party Rights and Intervention Before the International Court," *Virginia Journal of International Law* 32, Issue 2 (1991-92): 285-376.

[31] Alina Miron, "Intervention," in *Nicaragua Before the International Court of Justice: Impacts on International Law*, ed. Edgardo Sobenes Obregon and Benjamin Samson (Cham, Switzerland: Springer, 2018), 390.

[32] Robert Kolb, *The International Court of Justice* (Oxford, United Kingdom: Hart Publishing, 2013), 695. Hugh Thirlway, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence* (Oxford, United Kingdom: Oxford University Press, 2013), 1071.

[33] Weil, *The Law of Maritime Delimitation*, 252-6.

[34] Malcolm D. Evans, "Maritime Boundary Delimitation: Where do We Go from Here?" in *The Law of the Sea: Progress and Prospects*, ed. David Freestone, Richard Barnes, and David Ong (Oxford, United Kingdom: Oxford University Press 2006), 137-60.

acknowledged gradually as a relevant factor in the delimitation process.[35] Just as Naomi Burke O'Sullivan observes, "the legal interests of third States" may be affected, "even though in theory they (maritime delimitation decisions) are only binding on the parties to the case".[36]

1.3.2 Literature on the NEA and the SCS disputes' settlement and regional cooperation

This part will focus on the literature of international law and international relations regarding the NEA and the SCS maritime conflicts. With regard to NEA's maritime disputes, how to delimit maritime boundaries and how to resolve jurisdiction conflicts among bordering States have been under discussion. Chinese scholars argue for the natural prolongation method in the delimitation of the Yellow Sea/West Sea and the ECS.[37] However, South Korea's scholars claim the application of the median line method in the Yellow Sea/West Sea but the natural prolongation method in the ECS.[38] Scholars from Japan advocate the application of the median line to delimit the ECS with China and South Korea.[39] On the other hand, international Law scholars have proposed a series of legal and political arrangements regarding NEA regional marine cooperation. Mark Valencia has preliminarily discussed regional maritime regime-building in East Asia.[40] After reviewing the current ECS cooperation, Keyuan Zou reveals some

[35] Naomi Burke O'Sullivan, "The Case Law's Handling of Issues Concerning Third States," in *Maritime Boundary Delimitation: The Case Law-Is It Consistent and Predictable?* ed. Alex G. Oude Elferink, Tore Henriksen, and Signe Veierud Busch, (Cambridge, United Kingdom: Cambridge University Press, 2018), 262-90. Thomas Cottier, *Equitable Principles of Maritime Boundary Delimitation: The Quest for Distributive Justice in International Law*, (Cambridge, United Kingdom: Cambridge University Press, 2015), 491-510. Tanaka, *The International Law of the Sea*, 218-20. Alain Pellet, "Land and Maritime Tripoints in International Jurisprudence," in *Coexistence, Cooperation and Solidarity: Liber Amicorum Rüdiger Wolfrum*, ed. Holger P. Hestermeyer et al, (Leiden, Netherlands: Martinus Nijhoff, 2012), 245-63. Alex G. Oude Elferink, "Third States in Maritime Delimitation Cases: Too Big a Role, Too Small a Role, or Both?" in *The Future of Ocean Regime-Building: Essays in Tribute to Douglas M. Johnston*, ed. Aldo Chircop, Ted McDorman, and Susan Rolston (Leiden, Netherlands: Brill Nijhoff, 2009), 611-41. Yoshifumi Tanaka, *Predictability and Flexibility in the Maritime Delimitation*, (Oxford, United Kingdom: Hart Publishing, 2006), 241-57. Coalter G. Lathrop, "Tripoint Issues in Maritime Boundary Delimitation," in *International Maritime Boundaries*, ed. David A. Colson and Robert W. Smith (Dordrecht, Netherlands: Martinus Nijhoff, 2005), 3305-75.

[36] O'Sullivan, "The Case Law's Handling of Issues," 289.

[37] Guoxing Ji, "Maritime Jurisdiction in the Three China Seas: Options for Equitable Settlement," *UC San Diego Policy Papers* 19, (1995): 8, accessed May 3, 2018, https://escholarship.org/content/qt7rq2b069/qt7rq2b069.pdf. Haiwen Zhang, "Legal Issues Concerning the East China Sea Delimitation: A Chinese Perspective on the Sino-Japanese the East China Sea Dispute," *Japanese Yearbook of International Law* 51, (2008): 129.

[38] Seokwoo Lee and Hee Eun Lee, *The Making of International Law in Korea: From Colony to Asian Power* (Leiden, Netherlands: Brill Nijhoff, 2016), 204, 252.

[39] Moritaka Hayashi, "The 2008 Japan-China Agreement on Cooperation for the Development of East China Sea Resources," in *Maritime Border Diplomacy*, ed. Myron H. Nordquist and John Norton Moore (Leiden, Netherlands: Brill Nijhoff, 2012), 39.

[40] Mark J. Valencia, "Regional Maritime Regime Building: Prospects in Northeast and Southeast Asia," *Ocean Development & International Law* 31, Issue 3 (2000): 223-47. Mark J. Valencia, *Maritime Regime Building: Lessons Learned and Their Relevance for Northeast Asia* (Hague, Netherlands: Martinus Nijhoff Publishers, 2001). Mark J. Valencia and Yoshihisa Amae, "Regime building in the East China Sea," *Ocean Development & International Law* 34, Issue 2 (2003): 189-208. Mark J. Valencia, "Regime-building in East Asia: Recent Progress and Problems," in *The Future of Ocean Regime-building: Essays in Tribute to Douglas M. Johnston*, ed. Aldo Chircop, Ted L. McDorman, and Susan J. Rolston (Leiden, Netherlands: Brill Nijhoff, 2009), 671-99.

potential problems for the implementation of international law to be resolved.[41] It should be remarked that legal cooperation still needs more political trust and confidence-building in the region. international relations scholars analyze the NEA marine disputes and cooperation in light of international relations theories that mainly concern realism, liberalism, and constructivism. Additionally, they regard the ECS as the main zone in which to test the application of different theories. Realists focus on power competition not only between China and South Korea and Japan but also between China and the United States in a broader context.[42] Liberalists are more positive regarding the prevention of escalating conflicts by cooperation among States due to complex economic interdependencies and compliance with international rules and norms.[43]Constructivists emphasize how NEA States identify themselves and apply such an identity to deal with NEA maritime conflicts and cooperation.[44]

Regarding the SCS maritime disputes, international law scholars have extensively examined how to seek better legal means to settle them. Mark Valencia, Jon Van Dyke, and Noel Ludwig consider several hypothetical options in the attribution of maritime space of the Spratly Islands (Spratlys).[45] Victor Prescott and Clive Schofield suggest delimiting an equidistant line that "separates the outermost features in the Spratlys from the nearest features of the countries surrounding the archipelago".[46] Scholars tend to

[41] Keyuan Zou, "Maritime Conflict and Cooperation in East Asia: Recent Developments and Future Prospects," in *Assessing Maritime Disputes in East Asia: Political and Legal Perspectives*, ed. Barthelemy Courmont, Frederic Lasserre, and Eric Mottet (London, United Kingdom: Routledge, 2017), 37-50.

[42] Min Gyo Koo, "Belling the Chinese Dragon at Sea: Western Theories and Asian Realities," *Ocean Development & International Law* 48, Issue 1 (2017): 52-68.

[43] M. Taylor Fravel, "International Relations Theory and China's Rise: Assessing China's Potential for Territorial Expansion," *International Studies Review* 12, Issue 4 (2010): 505-32. Valencia, "Regional Maritime Regime Building," 236.

[44] Wrenn Yennie Lindgren and Petter Y. Lindgren, "Identity Politics and the East China Sea: China as Japan's 'Other'," *Asian Politics & Policy* 9, Issue 3 (2017): 378-401. Kevin P. Clements, "Trust, Identity and Conflict in Northeast Asia – Barriers to Positive Relationships," in *Identity, Trust, and Reconciliation in East Asia: Dealing with Painful History to Create a Peaceful Present*, ed. Kevin P. Clements (Cham, Switzerland: Palgrave Macmillan, 2018), 1-27. Geun Lee, "Identity, Threat Perception, and Trust-Building in Northeast Asia," in *Identity, Trust, and Reconciliation in East Asia: Dealing with Painful History to Create a Peaceful Present*, ed. Kevin P. Clements (Cham, Switzerland: Palgrave Macmillan, 2018), 29-46.

[45] Mark J. Valencia, Jon M. Van Dyke, and Noel A. Ludwig, *Sharing the Resources of the South China Sea*, (Hague, Netherlands: Martinus Nijhoff, Kluwer Law International, 1997), 260-5, 269. Specifically, Plate 7 introduces "allocation of the Spratly features and maritime space according to rough equity and realpolitik concerns", assuming that "Philippines would receive Scarborough Reef, and China would receive Macclesfield Bank". Plate 8 relates to "allocation of the entire South China Sea using lines equidistant from defensible baselines", given that both the Spratlys and the Paracels are ignored. Plate 9 concerns "allocation of the entire South China Sea using lines equidistant from defensible baselines, ignoring the Spratlys but giving full effect to the Paracels". Plate 10 depicts "allocation of the Spratly features and maritime space based on rough equity and realpolitik concerns". Plate 11 describes "allocation of the South China Sea and features out to 200 nautical miles from defensible baselines, ignoring both the Spratlys and the Paracels". Plate 12 demonstrates "allocation of the South China Sea and features out to 200 nautical miles, ignoring the Spratly but giving full effect to the Paracels, based on defensible baseline claims".

[46] Victor Prescott and Clive Schofield, *The Maritime Political Boundaries of the World*, 2nd ed. (Leiden, Netherlands: Brill Nijhoff, 2005), 456-7. "The line of equidistance was also drawn between the northernmost outlying Spratly Islands and Scarborough Reef claimed by both China and Philippines". "The outlying islands and rocks of the Spratly group proceeding clockwise from Ladd Reef, lying just west of Spratly Island are Fiery Cross Reef, Thi Tu Reefs, North Danger Reef, West York Island, Flat Island, Nanshan Island, Half-Moon Reef, Commodore Reef, Swallow Reef and Louisa Reef".

invoke UNCLOS (the Convention) as the primary instrument, and diverse views have been specifically shown on the *SCS* Arbitration. The analysis relates to the nature of the dispute, jurisdictional exceptions, and the outcomes of two Awards, and no definitive conclusions have been reached yet.[47] The SCS is subject to serious fishery and marine environmental crisis, and legal scholars have contributed to providing possible arrangements to improve fishery and marine environmental cooperation.[48] After the *SCS* Arbitration, some scholars proposed a new scheme for cooperation based on the ruling; nonetheless, it remains to be seen how such cooperation can be put into practice in reality.[49] Apart from that, in light of different theories, international relations scholars have examined interstate relations in the SCS with the evolution of the disputes. Realists delve into power competition not only between China and bordering States and Association of Southeast Asian Nations (ASEAN) but also between China and the United States.[50] Liberalists emphasize the importance of UNCLOS in addressing the SCS disputes and call for a rule-based international legal order in the region.[51] Constructivists emphasize how China, ASEAN, and ASEAN member States have

[47] S. Jayakumar et al. eds., *The South China Sea Arbitration: The Legal Dimension* (Cheltenham, United Kingdom: Edward Elgar Publishing, 2018). Chinese Society of International Law, "The *South China Sea* Arbitration Awards: A Critical Study," *Chinese Journal of International Law* 17, Issue 2 (2018): 207-748.

[48] Hongzhou Zhang, "Fisheries Cooperation in the South China Sea: Evaluating the Options," *Marine Policy* 89, Feb (2018): 67-76. Kuan-Hsiung Wang, "Peaceful Settlement of Disputes in the South China Sea through Fisheries Resources Cooperation and Management," *Maryland Series in Contemporary Asian Studies* 2015, no. 3 (2015): accessed May 3, 2018, https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1226&context=mscas. Yao Huang and Pham Tran Vuong, "Fisheries Cooperation and Management Mechanisms in the South China Sea: Context, Limitations, and Prospects for the Future," *Chinese Journal of Comparative Law* 4, Issue 1 (2016): 128-48. Keyuan Zou, "Managing Biodiversity Conservation in the Disputed Maritime Areas: The Case of the South China Sea," *Journal of International Wildlife Law & Policy* 18, Issue 2 (2015): 97-109. Bai Jiayu and Hu Huijun, "Transcending Divisions and Harmonizing Interests: How the Arctic Council Experience can Inform Regional Cooperation on Environmental Protection in the South China Sea," *Chinese Journal of International Law* 15, Issue 4 (2016): 925-45. Nguyen Chu Hoi and Vu Hai Dang, "Building a Regional Network and Management Regime of Marine Protected Areas in the South China Sea for Sustainable Development," *Journal of International Wildlife Law & Policy* 18, Issue 2 (2015):128-38.

[49] Chie Kojima, "*South China Sea* Arbitration and the Protection of the Marine Environment: Evolution of UNCLOS Part XII Through Interpretation and the Duty to Cooperate," *Asian Yearbook of International Law* 21, (2017): 166-80. Vasco Becker-Weinberg, "The *South China Sea* Arbitration and the China–Philippines Relations Beyond the Award," in *Stress Testing the Law of the Sea: Dispute Resolution, Disasters & Emerging Challenges*, ed. Stephen Minas and Jordan Diamond (Leiden: Netherlands, Brill Nijhoff, 2018), 190-222. "Defusing the South China Sea Disputes: A Regional Blueprint," Center for Strategic & International Studies, accessed January 14, 2019, https://csis-prod.s3.amazonaws.com/s3fs-public/publication/181011_The_South_China_Sea.pdf?9XnyG7pgGFZp2roiOV2veUwZC57csKeb.

[50] Klaus Heinrich Raditio, "China's Shifting Behaviour in the South China Sea: A Defensive Realist Perspective," *American Journal of Chinese Studies* 22, no. 2 (2015): 309-28. Renato Cruz De Castro, "Facing Up to China's *Realpolitik* Approach in the South China Sea Dispute: The Case of the 2012 Scarborough Shoal Stand-off and Its Aftermath," *Journal of Asian Security* 3, Issue 2 (2016): 157-82. Huiyun Feng and Kai He eds., *US–China Competition and the South China Sea Disputes* (London, United Kingdom: Routledge, 2018). Anders Corr ed., *Great Powers, Grand Strategies: The New Game in the South China Sea* (Maryland, United States: Naval Institute Press, 2018).

[51] Joseph S. Nye Jr., "Will the Liberal Order Survive: The History of an Idea," *Foreign Affairs* 96, Issue 1 (2017): 16. Katherine Morton, "China's Ambition in the South China Sea: Is a Legitimate Maritime Order Possible?" *International Affairs* 92, Issue 4 (2016): 909-40.

perceived their identities in different periods based on social knowledge they have, and how their own self-cognition affects SCS dispute settlement and cooperation.[52]

To summarize, international legal scholars focus on the operation of legal rules in territorial and maritime disputes, while international relations scholars concentrate on how to select different means to resolve disputes. An examination of international law academic works has led to the view that the extent of the role third States play in a bilateral dispute relies on how international courts and tribunals comply with the principle of State consent. On a theoretical level, such compliance points to the interpretation and application of the principle of State consent. Specifically, the debate on the application of the *Monetary Gold* principle at the jurisdictional stage reflects whether a court's or a tribunal's judicial competence is restrained by the consent from third States. By contrast, a third-party judicial organ at the substantial stage has been granted consent from parties to the case in the determination of a third State's request for permission to intervene in a pending dispute. With respect to jurisdictional matters, the current study on the *Monetary Gold* principle only considers situations where third States are directly involved. Given absent third States, this principle remains applicable for identifying a real dispute purely between two original litigants. However, the existing studies fail to discuss the latter situation. Meanwhile, regarding substantial matters, the present literature has revealed that third States are subject to insufficient protection in maritime dispute settlement, particularly in maritime boundary delimitation. One could continue conducting a relevant analysis of the insufficiency of legal means to protect third States' rights and interests in international adjudication. In addition, as a supplementary study, this research project looks into the extent to which the rights and interests of third States are dealt with in State practice. Moreover, the international relations analysis of the NEA and SCS disputes relies on a single theory to explain how bordering States conflict and cooperate with each other. Nonetheless, the application of one theory cannot adapt to the complex legal and political environment of NEA and the SCS. It is illuminated that a multivariate regime theory in international relations can be established in a comprehensive and balanced way. The application of a multivariate international relations theory actually consists of realist, liberalist, and constructivist regime theories and models, which enriches the existing literature on the management of two zonal disputes and transboundary cooperation.

[52] Rex Li, "China's Sea Power Aspirations and Strategic Behaviour in the South China Sea: From the Theoretical Perspective of Identity Construction," in Power Politics in *Asia's Contested Waters: Territorial Disputes in the South China Sea*, ed., Enrico Fels and Truong-Minh Vu (Cham, Switzerland: Springer, 2016), 117-37.

1.4 Research methodology and research design

In light of previous research questions and literature review, this study adopts various research methods to gather information and to produce research outputs. The fundamental approach to data collection will be through a study of primary and secondary sources. Relevant sources in the thesis are mainly available from library databases and the Internet, including websites of international courts and tribunals, scholarly publications, legal texts and documents, news media, etc. Primary resources are concerned with international and regional legal documents. On the one hand, the second chapter discusses the interpretation and application of some provisions of UNCLOS in the *SCS* Arbitration where the Vienna Convention on Diplomatic Relations (VCLT) in 1969 and the UNCLOS are invoked. The third chapter presents an overview of the development of the procedure of intervention in international law. It reviews a series of international treaties, including *Institut de Droit International*'s resolution in 1875 the Convention for the Pacific Settlement of International Disputes in 1899, the Convention for the Pacific Settlement of International Disputes in 1907, the General Act for the Pacific Settlement of International Disputes in 1928, the Revised General Act for Pacific Settlement of International Disputes in 1949, the ICJ Statute, the VCLT, and Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations in 1986 (VCLTSIO). On the other hand, official documents from domestic governments and international or regional organizations are also examined. For NEA and the SCS, in terms of government statements, declarations, and legislative acts, various positions on maritime territory from neighboring countries are provided. Additionally, agreements, rules, and regulations from international and regional organizations are elaborated as well, so as to demonstrate the deficiencies of current regime settings and the urgent need to establish multivariate maritime regimes in the East Asia region. With regard to secondary resources, it is scholarly research publications that have a supporting role to play in the study, including academic papers, books, reports, etc. The second and third chapters, and the legal dilemmas of NEA and the SCS in the fifth and sixth chapters frequently adopt works from International Law scholars and practitioners. Furthermore, quite a few publications from International Law scholars in realism, liberalism, constructivism, and regime theories contribute to discussing the applicability of the multivariate regime theory.

The second approach of this study is an interdisciplinary approach that links international relations and international law scholarship. As Jeffrey Dunoff and Mark Pollack have observed, international law and international relations scholars have devoted themselves to "the making, interpretation of and compliance with international

law", and have thus "generated substantial theoretical insight and empirical knowledge about international law".[53] The international lawmaking process, the interpretation and application of international rules and principles, and the compliance with and effectiveness of international law are the focus of research by international law scholars. For international relations scholars, international law serves as one narrative mode to handle international relations among States, since those States with stronger legal advantages over counterparts may prefer to resolve interstate conflicts via international law.[54] Beginning with the fourth chapter, the thesis of the present work relies on the international relations scholarship to address the legal dilemma in which third States find themselves in international maritime disputes, especially in the East Asian region. The purpose of resorting to international relations scholarship is to find out whether and how international relations theories may provide another solution to supplement the role of international law in safeguarding third States' rights and interests in a disputed multistate marine zone.

The case study constitutes another method to be adopted. The second and third chapters review a series of cases from the ICJ and arbitral tribunals and summarize how third States are taken into account at the jurisdictional and substantial stages of international adjudication. The second chapter outlines the jurisprudence of the *Monetary Gold* principle based on the *Monetary Gold* case and associated cases; it examines how the presence of third States affects the exercise of jurisdiction conferred by original litigating States in a dispute. In particular, it delves into whether this principle is rightly interpreted and applied in the *SCS* Arbitration case. If not, it is perceived that third States in the SCS will encounter legal dilemmas, and their rights and interests will suffer from prejudice. Therefore, the second chapter is closely related to the fifth chapter on legal dilemmas and regime-building in the SCS. The third chapter focuses on the ICJ's cases as regards the intervention procedure under Articles 62 and 63 of the ICJ Statute. The majority of cases at issue concern international maritime boundary disputes.Whether third-party dispute settlement mechanisms in these cases provide sufficient protection for third States will be examined. Particularly, it looks into whether the *SCS* Arbitral ruling reflects the dilemma of international law's inadequacy to offer enough protection for third States. Accordingly, the jurisprudence relating to the intervention procedure in the maritime delimitation cases is directly linked to the

[53] Jeffrey L. Dunoff and Mark A. Pollack, "Reviewing Two Decades of IL/IR Scholarship: What We've Learned, What's Next," in *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art*, ed., Jeffrey L. Dunoff and Mark A. Pollack (Cambridge, United Kingdom: Cambridge University Press, 2012), 626.

[54] Paul K. Huth, Sarah E. Croco and Benjamin J. Appel. "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts since 1945," *American Political Science Review* 105, no. 2 (2011): 428-34. Andrea Bianchi, *International Law Theories: An Inquiry into Different Ways of Thinking* (Oxford, United Kingdom: Oxford University Press, 2016), 126-31.

content of the fifth and sixth chapters, concerning legal dilemmas and regime-building in the NEA and SCS regions.

1.5 Structure and outline of the thesis

There are seven chapters in the present thesis. The first chapter presents the background of the study, research questions, literature review, research methodologies, and structure and outline of the thesis.

The second and third chapters provide a legal analysis of the presence of third States in international adjudication from procedural and substantial perspectives, respectively. To be more specific, the second chapter makes some observations on the evolution of the *Monetary Gold* principle in international litigation history and how this principle is interpreted and applied in the *SCS* Arbitration. This chapter first introduces the *Monetary Gold* case and preliminarily outlines the *Monetary Gold* principle. Afterwards, it sums up requirements of applying this principle and analyzes the role of such a principle in the exercise of the jurisdiction of a court or tribunal as well as the admissibility of claims from parties to the case. Then, based on previous research findings, this chapter specifically evaluates the application of this principle in the *SCS* Arbitration. Finally, assuming the *SCS* Award was followed, this chapter makes an assessment of the impact of the MA on two principal parties and third States in the SCS. The overall assessment further provides a justification in order to clarify the legal dilemma of the SCS from the perspective of third States.

The third chapter examines how the rights and interests of third States are taken into consideration at the substantial stage. It starts with a brief history of how the intervention procedure develops under international law, in terms of relevant international conventions. Second, the chapter examines two provisions of the ICJ Statute which stipulate how third States seek to intervene in pending proceedings. For one thing, relevant cases relating to Article 62 will be looked into and some observations will be made on the effectiveness of this legal means in the protection of the rights and interests of third States, particularly in maritime boundary delimitation cases. In addition, it also presents a description of underlying impacts on third States in maritime disputes. For another, it also discusses the effectiveness of intervention under Article 63 in international adjudication and points out underlying challenges third States may encounter. Third, this chapter will elaborate a comparative study on State practices relating to the existence of tripoints, enunciating the flexibility and practicality of considering the rights and interests of third States. In the end, some final remarks will be made on the insufficiency of the intervention procedure to protect the legal rights and

interests of third States, especially in the field of international maritime boundary delimitation. It is revealed that there should be a more inclusive approach taken to properly handle the multilateral interests from third States in maritime disputes.

Since the legal means appear inadequate to fully pay due regard to the rights and interests of third States in a multistate-disputed zone, chapter four discusses how international relations scholarship contributes to explaining how the rights and interests of third States are addressed by focusing on common interests shared by regional States. It is contended that regime theory should be applicable to offset the insufficiency of legal methods. The first part of this chapter introduces the regime theory and explains why it assists in safeguarding the rights and interests of third States in a multistate-disputed maritime conflict. The second section illustrates different regime formation models on the basis of some mainstream international relations theories, including realism, liberalism, and constructivism. But mere reliance on the single international relations theory does not help address the inadequacy of the legal means. Accordingly, this chapter argues for the application of a multivariate regime model. The third section lists some cases in the international community where a multivariate regime setting is established in some disputed maritime areas bordered by several States, and how distinct rights and interests of disputing countries and third States are properly addressed. These areas are the Mediterranean Sea, the North Sea, the Baltic Sea, the Caribbean Sea, the African Union Border Programme (AUBP) in the East African Ocean, the Arctic and the Antarctic areas.

The fifth and sixth chapters will shift to the East Asia region. The fifth chapter discusses legal dilemmas and regime-building in three contested zones of NEA. At first, this chapter demonstrates what the legal dilemma is in the NEA disputed waters. Given the application of delimitation methodology under international law, it examines possible delimitation proposals in the NEA and discovers that the presence of third States gives rise to difficulties for underlying proposals to be implemented. To be continued, this chapter illustrates how a multivariate regime theory assists in protecting the rights and interests of third States in spite of interstate pending delimitations. In accordance with the application of multivariate regime theory, some incomplete elements of existing regime settings in NEA are disclosed. In order to develop a multivariate maritime regime in NEA, this chapter provides some policy recommendations for relevant NEA-States in the fields of fishery management and transboundary marine environmental protection which reflect the existence of common interests in the region.

The sixth chapter looks into legal dilemmas and regime-building in the SCS region from the perspective of third States. The second chapter has pointed out a legal dilemma in that the *SCS* Arbitration produces adverse impacts on third States, and international law as a legal means could not fully resolve the SCS dispute. This chapter looks into an additional legal dilemma that third States' rights and interests will not be sufficiently taken into account in the delimitation of the Spratlys area, even if China and the Philippines as disputing States complied with this final ruling, and even if the ruling were also followed by other third States in the SCS. Afterwards, in light of multivariate regime theory, this chapter apprises the effectiveness of established maritime regimes and spells out the necessity of establishing a multivariate maritime regime. Moreover, this chapter indicates how multivariate regime theory assists the SCS-bordering States to manage transboundary conflicts and promote transboundary cooperation in the undelimited maritime areas. Last but not least, against the background of the Belt and Road Initiative (BRI), this chapter sets forth that the Maritime Silk Road Initiative (MSRI) and the Vision for Maritime Cooperation under the Belt and Road Initiative (VMCBRI) as its associated policy guideline, initially formulate a multivariate maritime regime. It explains why some basic elements of the MSRI and VMCBRI meet the requirements of a multivariate maritime regime and introduces specific measures of promoting transboundary marine cooperation by converging on common interests shared by regional States.

The seventh chapter is the concluding section of the full thesis. It first outlines the context, reiterates the main research question of the study, and summarizes the main findings of each chapter. It is argued that the legal dilemma does exist in East Asia maritime conflicts and that it requires improvements in maritime regime to take into account the rights and interests of relevant States which have been overlooked by international law. What is more, it also sums up policy recommendations coming from the fifth and sixth chapters and contends that a multivariate maritime regime in the East Asia can be established.